



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 203717

PRELIMINARY RECITALS

Pursuant to a petition filed on November 16, 2021, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Richland County Health and Human Services regarding FoodShare benefits (FS), a hearing was held on December 14, 2021, by telephone. During the hearing, Petitioner stated that she had submitted a document via e-mail to the Division of Hearings and Appeals a short time prior to the hearing. The undersigned administrative law judge received that document following the hearing and forwarded it to the agency. That document, which was consistent with Petitioner's live testimony, was marked as Exhibit P-2 and incorporated into the hearing record.

The issue for determination is whether the agency correctly terminated Petitioner's FoodShare effective December 1, 2021 based on a finding that the household's gross income excess the FoodShare Program income limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Richland County Health and Human Services
221 W Seminary St.
PO Box 673
Richland Center, WI 53581

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a married resident of Dane County who resides with her spouse, [REDACTED], and two minor children. Her household received FoodShare in Wisconsin from May 2020 through November 2021.
2. Petitioner's spouse, [REDACTED], was employed by [REDACTED] from March 2020 through May 2021 at which time the company was purchased by [REDACTED].
3. In August 2021, [REDACTED] paid Petitioner a one-time lump sum equal to the value of his remaining PTO.
4. In October 2021, the agency reviewed a state database that indicated Petitioner was employed by and receiving income from [REDACTED] as of the second calendar quarter of 2021. Because the agency did not yet have information regarding that employer on file, the agency sent Petitioner a request to verify his current employment.
5. Petitioner provided paystubs from [REDACTED] dated October 15, 2021 and October 29, 2021 that showed gross wages of \$2,074.40 and \$2,048.48 respectively. In addition, Petitioner advised the agency at that time that [REDACTED] had acquired [REDACTED], which was previously owned by [REDACTED] and that [REDACTED] was his sole employer.
6. Based on the paystubs provided by Petitioner, the agency budgeted Petitioner's countable gross household income to be \$4,432.10.
7. By notice dated November 8, 2021, the agency informed Petitioner that his FS would end on December 1, 2021 because the household's income exceeded the program limit.

DISCUSSION

In a fair hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the agency has the burden of proof to establish that the action taken was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence that supports the agency's action. Here, the agency contended that Petitioner's household income exceeds relevant FS program limits.

Federal regulations and state policy set forth rules the Department of Health Services ("the department") must follow in determining eligibility for FS and calculating the amount of monthly FoodShare benefits to which an eligible household is entitled. 7 C.F.R. §273.10(e)(1)-(2); *FoodShare Wisconsin Handbook (FSHB)* §§4.3 and 4.6. The first step in this calculation requires the agency to count all of the household's monthly nonexempt income. This amount is then compared to a gross income limit which equals 200% of the Federal Poverty Level (\$4,418 for a four-member household as of October 1, 2021). See *FSHB* §4.2.1 and Appendix 8.1.1. Households that include an elderly, blind, or disabled member who have income that exceeds the gross income limit may still be eligible for FS but only if their net income (income after applicable deductions) falls under the program's net income which is equal to 100% FPL and if their countable assets are valued at less than \$3,500. See *FSHB* §4.2.1.5.

In accordance with FS program rules, the agency uses a prospective budgeting method when calculating a household's nonexempt income. *FSHB* §4.1.1. This method typically entails looking at a household's past 30 days income to estimate the agency's future income. The agency may use income from a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. *FSHB* §1.2.4.2. In other words, the agency has the discretion in how it chooses to average fluctuating income although the agency's protocol must be reasonable.

Where the past 30 days earned income is determined to be a proper estimate of future earned income and the individual is paid on a biweekly basis, as is the case for [REDACTED], the agency will calculate a

biweekly average and then multiply that figure by 2.15 to account for three-paycheck months. *Process Help Guide Release 18-02*, § 16.4.3; see also 7 C.F.R. §273.10(c)(2). For weekly income, the multiplier is 4.3. *Id.*

Petitioner filed her appeal because she was concerned that the agency was budgeting the one-time PTO payment made to [REDACTED] in August 2021. However, at hearing and in the agency's exhibits, the agency demonstrated that it found the household's income to exceed the gross income limit based solely on [REDACTED] wages from [REDACTED], as those wages were reflected on two paystubs provided by the household and that the agency did not include the PTO sum.

As detailed in the agency's Exhibit G, the agency determined that Petitioner works an average of 79.5 hours every two weeks and multiplied 79.5 by his hourly wage to arrive at a \$2,061.14 average biweekly gross income figure. The agency then multiplied that number by 2.15, to account for 3-paycheck months during the year, and arrived at a projected monthly gross income of \$4,432.10. The agency's calculation was consistent with federal regulation and agency policy. Because the current gross income limit for a four-member household is \$4,418, the agency properly terminated Petitioner's FS.

Petitioner explained that their household has financial challenges and that nutrition assistance has been a great help. I do not doubt the sincerity or truth of her testimony but, as an administrative law judge, I do not have the authority to make exceptions to FS program eligibility rules that are set forth in the above-cited relevant legal authorities.

CONCLUSIONS OF LAW

The agency correctly terminated Petitioner's Food Share (FS) eligibility effective December 1, 2021 because the household gross income exceeded the FS program income limit.

THEREFORE, it is

ORDERED

Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.


The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

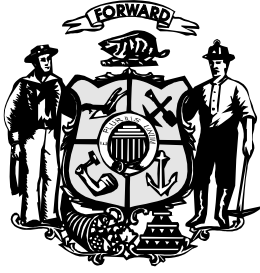
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of January, 2022


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Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 12, 2022.

Richland County Health and Human Services
Division of Health Care Access and Accountability